



SMALL BUSINESS ADMINISTRATION

Tribal Consultation for Ownership and Control and Contractual Assistance; Requirements for the 8(a) Business Development (BD) Program and other Planned 8(a) BD Program Regulatory Proposals

AGENCY: Small Business Administration.

ACTION: Notice of tribal consultation meeting; request for comments.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) announces that it is holding tribal consultation meetings in Anchorage, Alaska, Albuquerque, New Mexico, Oklahoma City, Oklahoma and Washington, D.C., as well as a Listening Session in Honolulu, Hawaii, concerning forthcoming proposed revisions to the 8(a) Business Development (BD) program regulations. Additionally, SBA requests comments and input on how best to propose several program policies the Agency is contemplating that would impact Alaska Native Corporations (ANC), tribes, Native Hawaiian Organizations (NHO) (collectively, “entities”), and 8(a) Participants owned by such entities. Testimony presented at these tribal consultations will become part of the administrative record for SBA’s consideration when the Agency deliberates on approaches to changes in the 8(a) BD program regulations.

DATES: The Tribal Consultation meeting dates are as follows:

1. Wednesday, September 14, 2022, 9:00 a.m. to 2:30 p.m. (AKDT), Anchorage, Alaska. Pre-registration for this Tribal Consultation meeting is requested by September 9, 2022.
2. Tuesday, September 20, 2022, 10:00 a.m. to 3:00 p.m. (MDT), Albuquerque, New Mexico. Pre-registration for this Tribal Consultation meeting is requested by September 16, 2022.

3. Thursday, September 22, 2022, 10:00 a.m. to 3:00 p.m. (CDT), Oklahoma City, Oklahoma. Pre-registration for this Tribal Consultation meeting is requested by September 19, 2022.
4. Wednesday, October 5, 2022, 10:00 a.m. to 3:00 p.m. (EDT), Washington, D.C. Pre-registration for this Tribal Consultation meeting is requested by September 30, 2022.
5. The Listening Session will be held on Wednesday, September 28, 2022, 10:00 a.m. to 3:00 p.m. (HST), Honolulu, Hawaii. Pre-registration for this Listening Session is requested by September 23, 2022.

ADDRESSES:

Meeting Locations:

1. The Tribal Consultation meeting in Anchorage, Alaska will be held at the Z.J. Loussac Public Library, 3600 Denali Street, Anchorage, AK 99503.
2. The Tribal Consultation meeting in Albuquerque, New Mexico will be held at the Indian Pueblo Cultural Center, 2401 12th Street NW, Albuquerque, New Mexico 87104.
3. The Tribal Consultation meeting in Oklahoma City, Oklahoma will be held at the Metro Technology Centers, Springlake Campus Health Careers Center, 1720 Springlake Drive, Oklahoma City, OK 73111.
4. The Tribal Consultation meeting in Washington, D.C. will be held at SBA Headquarters, 409 Third Street SW, Washington, D.C. 20416. Commenters and attendees may participate in-person or remotely at this consultation meeting.
5. The Listening Session in Honolulu, Hawaii will be held at the SBA Hawaii District Office, 500 Ala Moana Boulevard, Suite 1-306, Honolulu, Hawaii 96813.

Pre-registration: Send pre-registration requests to attend and/or testify to

Chequita Carter of SBA's Office of Native American Affairs, U.S. Small Business

Administration, 409 3rd Street SW, Washington, DC 20416; Chequita.Carter@sba.gov; or Facsimile to (202) 481-2177.

Comments: You may submit comments, identified by Regulations Identifier Number (RIN) 3245-AH70, by any of the following methods:

- E-mail: to Jackson S. Brossy, Assistant Administrator, Office of Native American Affairs, U.S. Small Business Administration, at tribalconsulation@sba.gov.
- Mail (for paper, disk, or CD-ROM submissions): to Jackson S. Brossy, Assistant Administrator, Office of Native American Affairs, U.S. Small Business Administration, 409 3rd Street, SW, Washington, DC 20416.

Instructions: All submissions received will become part of the administrative record for any rulemaking resulting from these tribal consultation meetings and listening session. As such, comments received may be posted on <http://www.regulations.gov>. If you wish to submit confidential business information (CBI) as defined in the User Notice at <http://www.regulations.gov>, please submit the comments to Jackson S. Brossy and highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will make a final determination as to whether the comments will be published.

FOR FURTHER INFORMATION CONTACT: Chequita Carter, Program Assistant for SBA's Office of Native American Affairs, at Chequita.Carter@sba.gov or (202) 205-6680 or by facsimile to (202) 481-2177. This phone number can also be reached by individuals who are deaf or hard of hearing, or who have speech disabilities, through the Federal Communications Commission's TTY-Based Telecommunications Relay Service teletype service at 711.

SUPPLEMENTARY INFORMATION:

I. Background

SBA is planning to issue a proposed rule concerning the 8(a) BD program regulations under RIN 3245-AH70. The proposed rule is intended to clarify regulatory provisions relating to both program eligibility and 8(a) contracts to eliminate confusion among small businesses and procuring activities. SBA anticipates that the proposed rule will be published prior to the tribal consultation meetings and the Listening Session announced in this Notice. SBA is seeking comments and input on the changes identified in the proposed rule.

Among other things, the proposed rule would require an entity, as part of its entity-owned business concern's 8(a) application, to establish a Community Benefits Plan laying out its commitments to give back to the Native community in several specific identified ways. SBA understands that not all of those commitments will come to fruition. Projected givebacks may be unattainable where actual revenues do not meet expectations or if other unforeseen business needs occur. However, SBA believes that there should be some programmatic consequences where estimated revenues were obtained but not all the committed benefits are given to the community. SBA is considering proposing certain consequences to the regulations to encourage entities to meet their commitments. SBA is seeking comments on what type of consequences should be imposed where SBA determines that an entity has not made good faith efforts to meet its stated commitments. One possibility that SBA is considering would be to disallow that entity from admitting any new business concerns to the 8(a) BD program until the entity meets the previous commitments with its business concern(s) already participating in the program. SBA is also considering whether there should be any other restrictions, such as restricting the award of additional sole source 8(a) contracts to any 8(a) Participant owned by the entity if SBA determines that the entity did not make good faith efforts to meet the commitments set forth in its Community Benefits Plan. SBA specifically asks for comments as to whether these consequences would be fair and

reasonable. Additionally, SBA is seeking input on how best to encourage entities to meet their stated give-back goals.

In addition to the above referenced regulatory proposals, SBA is contemplating making the following substantive changes to the regulations governing the 8(a) BD program, and requests comments and input on how best to develop proposed regulatory revisions. Any such revisions would not be promulgated under RIN 3245-AH70; rather, SBA would propose them under a separate rulemaking after considering testimony from the tribal consultation meetings and the Listening Session.

The 8(a) BD program has positively impacted Native American communities through individual as well as tribal, ANC, and NHO participation. The dual purposes of tribal/ANC/NHO participation in the 8(a) BD program are: to develop viable small business concerns while at the same time creating opportunities to provide significant benefits to the Native communities that they serve. In this regard, SBA accepts that a portion of an entity-owned Participant's receipts must be retained for business development purposes. However, the clear legislative intent of entity participation in the 8(a) BD program is to benefit Native and underserved communities using the revenues derived from the program. Thus, while SBA recognizes that in-kind contributions can be beneficial to Native and underserved communities, SBA believes entities participating in the 8(a) BD program should contribute a portion of their receipts to the communities they serve. SBA seeks to ensure that both of these purposes are advanced and invites comments on how best that can be accomplished.

Since 2011, the 8(a) BD regulations have required each Participant owned by a Tribe, ANC, or NHO to annually submit to SBA information showing how the Tribe, ANC, or NHO has provided benefits to the applicable Native community due to the Tribe's/ANC's/NHO's participation in the 8(a) BD program through one or more firms. SBA is considering a proposal to require more precise cash benefit distributions to the

applicable Native community to standardize SBA's collection and tracking of community benefits and in response to an observation that not all entities appear to be allocating an appropriate share of their 8(a) receipts to the communities they serve. To this end, some entity-owned Participants appear to report significant benefits primarily or exclusively in the form of in-kind contributions and, specifically, volunteer work performed by principals of the entity or its Participants.

SBA is considering a rule that would propose to establish a target that a certain percentage of the entity's 8(a) receipts combined from all its Participants should be distributed as a cash contribution to benefit the Native or underserved community. SBA is specifically seeking comments on: the target percentage amount that should be distributed as a cash contribution; whether the target should be tied to an entity's gross 8(a) receipts, or to profits derived by the entity's 8(a) Participants; whether the target percentage amount should increase based on how long an entity has owned business concerns participating in the 8(a) BD program or based on the number of Participants an entity owns; whether certain non-cash contributions or investments in the community should be considered in this measurement, including, but not limited to, community member employment; and any other measures SBA should consider to promote the dual purposes of tribal/ANC/NHO participation in the 8(a) BD program. The SBA additionally welcomes any estimates of costs to meet this requirement annually, as well as any feasibility concerns with such a requirement. The SBA also welcomes comments from any entity that has other proposed methods to track community benefits and reinvestment.

II. Tribal Consultation Meetings

The purpose of these tribal consultation meetings is to conform to the requirements of Executive Order 13175, Consultation and Coordination With Indian Tribal Governments (65 FR 67249), and SBA's Tribal Consultation Policy

(<https://www.sba.gov/document/support-sba-tribal-consultation-policy>); to provide interested parties with an opportunity to discuss their views on the issues; and for SBA to obtain the views of SBA's stakeholders on approaches to the 8(a) BD program regulations. SBA considers tribal consultation meetings a valuable component of its deliberations and believes that this tribal consultation meeting will allow for constructive dialogue with the Tribal community, Tribal Leaders, Tribal Elders, elected members of Alaska Native Villages or their appointed representatives, and principals of tribally-owned and ANC-owned firms participating in the 8(a) BD program.

The format of these tribal consultation meetings will consist of a panel of SBA representatives who will preside over the session. The oral and written testimony as well as any comments SBA receives will become part of the administrative record for SBA's consideration. Written testimony may be submitted in lieu of oral testimony. SBA will analyze the testimony, both oral and written, along with any written comments received. SBA officials may ask questions of a presenter to clarify or further explain the testimony. The purpose of the tribal consultation is to assist SBA with gathering information to guide SBA's review process and to potentially develop new proposals. SBA requests that the comments focus on SBA's planned rulemaking relating to the 8(a) BD program, general issues as they pertain to the 8(a) BD regulations, or the unique concerns of the Tribal communities. SBA requests that commenters do not raise issues pertaining to other SBA small business programs. Presenters are encouraged to provide a written copy of their testimony. SBA will accept written material that the presenter wishes to provide that further supplements his or her testimony. Electronic or digitized copies are encouraged.

Each tribal consultation meeting will be held for one day. The meeting in Anchorage, Alaska will begin at 9:00 a.m. and end at 2:30 p.m. (AKST), with a break from 12:00 p.m. to 1:00 p.m.; the meeting in Albuquerque, New Mexico will begin at

10:00 a.m. and end at 3:00 p.m. (MDT), with a break from 12:30 p.m. to 1:30 p.m.; the meeting in Oklahoma City, Oklahoma will begin at 10:00 a.m. and end at 3:00 p.m. (CDT), with a break from 12:30 p.m. to 1:30 p.m.; the meeting in Washington, D.C. will begin at 10:00 a.m. and end at 3:00 p.m. (EDT), with a break from 12:30 p.m. to 1:30 p.m.; and the Listening Session in Honolulu, Hawaii will begin at 10:00 a.m. and end at 3:00 p.m. (HST), with a break from 12:30 p.m. to 1:30 p.m. SBA will adjourn early if all those scheduled have delivered their testimony.

III. Registration

SBA respectfully requests that any elected or appointed representative of the tribal communities or principal of a tribally-owned, ANC-owned, or NHO-owned 8(a) firm that is interested in attending please pre-register in advance and indicate whether you would like to testify at the hearing. However, pre-registration is not required for attendance. SBA requests that attendees register with SBA no later than: September 9, 2022, for the consultation meeting in Anchorage; September 16, 2022, for the consultation meeting in Albuquerque; September 19, 2022, for the consultation meeting in Oklahoma City; September 30, 2022, for the consultation meeting in Washington, D.C.; and September 23, 2022, for the Listening Session in Honolulu. To register, please contact Chequita Carter of SBA's Office of Native American Affairs in writing at Chequita.Carter@sba.gov or by facsimile to (202) 481-2177. If you are interested in testifying, please include the following information relating to the person testifying: Name, Organization affiliation, Address, Telephone number, E-mail address and Fax number. For those who wish to remotely attend or participate in the Washington, D.C., tribal consultation meeting, SBA will provide further instructions upon registration. SBA will attempt to accommodate all interested parties that wish to present testimony. Based on the number of registrants it may be necessary to impose time limits to ensure that

everyone who wishes to testify has the opportunity to do so. SBA will confirm in writing the registration of presenters and attendees.

IV. Information on Service for Individuals with Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the tribal consultation meeting, contact Chequita Carter at the telephone number or e-mail address indicated under the FOR FURTHER INFORMATION CONTACT section of this notice.

Authority: 15 U.S.C. 634 and E.O. 13175, 65 FR 67249.

Jackson S. Brossy,
Assistant Administrator,
Office of Native American Affairs.

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